

Judge Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDY MAXFIELD,

Defendant.

NO. CR06-340 TSZ

GOVERNMENT'S
SENTENCING MEMORANDUM

The United States of America, by and through Jeffrey C. Sullivan, United States Attorney for the Western District of Washington, and Susan B. Dohrmann, Assistant United States Attorney for said District, respectfully submits the government's Sentencing Memorandum in the above-captioned case.

I. INTRODUCTION

On November 27, 2006, Defendant pleaded guilty to traveling in interstate commerce with the intent to engage in illicit sexual conduct, in violation of Title 18, United States Code, Section 2423(b). A Presentence Report has been prepared and there are no factual issues in dispute. Sentencing is scheduled for Friday, February 23, 2007, at 1:30 p.m., before the Honorable Thomas S. Zilly, United States District Judge.

II. SENTENCING RECOMMENDATION

The government respectfully recommends that a sentence of 60 months of imprisonment be imposed to be followed by a 15-year period of supervised release.

1 Under the guise of a family visit to the Seattle area, Defendant, using the Internet
 2 screen name "Gentlooking4fun," orchestrated a sexual encounter with a young girl he
 3 believed to be 13 years old. *See* Presentence Report ¶¶ 7-9. Defendant did so by seeking
 4 out the disturbed and twisted world where a parent would actually facilitate such an
 5 encounter for her own, sexually inexperienced child. As unfathomable as this activity may
 6 seem to many, it does occur and Defendant was eager to take advantage of this
 7 opportunity.

8 During lengthy chat sessions with both the mother and the young girl - both actually
 9 an undercover law enforcement officer - Defendant described, in the most graphic of
 10 terms, his plans for oral and anal sexual activity and light bondage. Defendant also
 11 described himself as someone who was "more in it for them [the child] than for myself"
 12 and that he was interested in "making love" not just "[having] sex."¹ Defendant's online
 13 persona was a cold and calculated presentation of a supposedly kind, gentle man whose
 14 only concern was for the child. As reassurance to his intended victim, Defendant
 15 described a previous sexual encounter with a 12-year old girl he taught about sex and to
 16 whom he "made love," a child with whom he was purportedly still in contact.

17 Defendant's online conversations with the person he believed to be the child were
 18 equally chilling and cunning. In graphic detail, Defendant described all the sexual
 19 activity - including anal sex - he hoped to teach and experience with this child. Defendant
 20 also told her that she ". . . could absolutely not tell ANYONE about it" because "the law
 21 considers it rape. .no matter how much you like. because of the age difference."
 22 Defendant explained that "the laws in this country don't want you to have sex until your
 23 18..at least not with anyone more that 4 years older than you."

24
 25 ¹ Defendant's conversations are more fully set forth in the Complaint and are
 26 incorporated herein by reference for the purposes of this Sentencing Memorandum.
 27 Content in quotation marks is found in the Complaint.
 28

1 Title 18, United States Code, Section 3553(a), provides

2 (a) Factors to be considered in imposing a sentence. The court
3 shall impose a sentence sufficient, but not greater than
4 necessary, to comply with the purposes set forth in paragraph
(2) of this subsection. The court, in determining the particular
sentence to be imposed, shall consider –

5 (1) the nature and circumstances of the offense and the history and
6 characteristics of the defendant;

7 (2) the need for the sentence imposed –

8 (A) to reflect the seriousness of the offense, to promote respect
for the law, and to provide just punishment for the offense;

9 (B) to afford adequate deterrence to criminal conduct;

10 (C) to protect the public from further crimes of the defendant;
11 and

12 (D) to provide the defendant with the needed educational or
vocational training, medical care, or other correctional
13 treatment in the most effective manner.

14 Section 3583(d) permits a district court to impose any discretionary condition it
believes is warranted so long as that condition is

15 (1) reasonably related to the factors set forth in section 3553(a)(1),
16 (a)(2)(B), (a)(2)(C), and (a)(2)(D);

17 (2) involves no greater deprivation of liberty than is reasonably
18 necessary for the purposes set forth in section 3553 (a)(2)(B),
(a)(2)(C), and (a)(2)(D) and

19 (3) is consistent with any pertinent policy statement issued by the
20 Sentencing Commission pursuant to 28 U.S.C. 994(a).

21 The calculated and sinister nature of this case calls for the imposition of a 15-year
22 period of supervised release following Defendant's release from custody. The government
23 respectfully requests that such a term be imposed under the conditions recommended by
24 the Probation Office. In this regard, Defendant's reliance on *United States v. Sales*, __
25 F.3d ___, 2007 WL 430429 (9th Cir. (Cal.)) is misplaced. In *Sales*, the defendant was
26 convicted of counterfeiting United States federal reserve notes and Sales used a scanner
27 and printer to make the counterfeit currency. The Court of Appeals for the Ninth Circuit
28 held that the district court abused its discretion in imposing a supervised release condition

1 requiring that the defendant “seek and obtain approval from his probation officer before
 2 using any particular computer or computer-related device, internet-service provider, or
 3 computer or internet account--such as a screen user name or email account” finding that
 4 “the breadth of [the condition] was not reasonably related to the nature and circumstances
 5 of Sale’s counterfeiting offense or Sales’s history and characteristics.” *Sales*, 2007 WL
 6 430429 at *3. In particular, the Court observed that Sales’s unlawful activity, while
 7 involving a scanner, computer and printer “did not utilize any other devices, and in no way
 8 involved or relied upon the internet, electronic bulletin boards, or other networks.” *Id.* In
 9 contrast, Maxfield relied entirely upon the Internet and his computer for his predatory
 10 purposes. The proposed condition operates in conjunction with the others to ensure that
 11 not only is Defendant deterred from any future conduct related to the exploitation of
 12 children, but that unsuspecting children themselves are protected from him. Proposed
 13 Condition # 9 is consistent with the purposes of Section 3583(d) and should be imposed.

14 DATED this 20th day of February, 2007.

15 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney of record for the defendant.

s/ Bonnie R. Wolfgram
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